UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MICHAEL KIBODEAUX, individually and on behalf of all others similarly situated	§	
	§	**Docket No. _____________**
Plaintiff,	§	
	§	**29 U.S.C. § 216(b)**
v.	§	
	§	
WOOD GROUP PRODUCTION AND CONSULTING SERVICES, INC.	§	
	§	
Defendant.	§	

COLLECTIVE ACTION COMPLAINT

I. Summary

1. Wood Group Production and Consulting Services, Inc. ("Wood Group" or "Defendant") does not pay certain day-rate workers overtime as required by the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the "FLSA"). Instead, Defendant misclassifies these workers as independent contractors and pays them "day-rate" for all hours worked, including those in excess of 40 hours in a workweek. This collective action seeks to recover the unpaid overtime wages and other damages owed to these workers.

II. Jurisdiction and Venue

2. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action involves a federal question under the FLSA. 29 U.S.C. § 216(b).

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

4. Defendant conducts substantial business in this District and Division and maintains its principle office in this District and Division.

III. The Parties

5. Michael Kibodeaux worked exclusively for Defendant during the relevant statutory time period from approximately May 2014 through March 2016 as a Project Manager. Throughout his employment with Defendant, Plaintiff was classified as an independent contractor and paid a day-rate with no overtime compensation for all hours worked over 40 hours in a single work week. His consent to be a party plaintiff is attached as Exhibit A.

6. Plaintiff brings this Action on behalf of himself and all other similarly situated workers who worked for Defendant in the past three years. The class of similarly situated employees ("Putative Class Members") consists of:

> **ALL INDIVIDUALS WHO WORKED FOR DEFENDANT IN THE PAST THREE (3) YEARS WHO WERE CLASSIFIED AS INDEPENDENT CONTRACTORS AND PAID A DAY-RATE WITH NO OVERTIME COMPENSATION.**

7. Defendant Wood Group Production and Consulting Services, Inc., is a Texas corporation and may be served through its registered agent, Corporation Service Company d/b/a CSC – Lawyers Inco., at 211 E. 7th Street, Suite 620, Austin, Texas 78701.

IV. The Facts

8. Wood Group is professional staffing business providing personnel and support services for the oil and gas industry.

9. Upon information and belief, Wood Group's annual gross revenues are in the millions.

10. Wood Group employees routinely handle goods or materials – such as hard hats, tools, steel toe shoes, automobiles, and cell phones that have moved in, or were produced for, interstate commerce.

11. As a staffing company, Wood Group is well aware of the FLSA's overtime requirements.

12. Once Wood Group learns the type of workers its clients need, Wood Group locates the workers requested and assigns them to its clients jobsites.

13. Kibodeaux was staffed by Wood Group.

14. Kibodeaux began working for Wood Group in approximately May 2014 at a Project Manager.

15. Kibodeaux ended his employment with Wood Group in approximately March 2016.

16. Throughout his employment with Wood Group, Kibodeaux was classified as an independent contractor and paid a day-rate.

17. Neither Kibodeaux nor the other workers like him advertise their services in the way that a "stand alone" business would.

18. Kibodeaux and the other workers like him find their employment through the jobs assigned to them by Wood Group.

19. Kibodeaux and the Putative Class Members are economically dependent on Wood Group within the meaning of the FLSA.

20. Wood Group controlled the meaningful aspects of the Putative Class Members' employment relationship.

21. Wood Group and/or its clients supervised the Putative Class Members (including Plaintiff).

22. Wood Group and/or its clients subjected the Putative Class Members (including Plaintiff) to additional control through their policies and procedures.

23. Wood Group required the Putative Class Members (including Plaintiff) to comply with all applicable codes and standards it and/or its clients adopted.

24. Wood Group set the Putative Class Members' (including Plaintiff's) schedules.

25. Wood Group and/or its clients required the Putative Class Members (including Plaintiff) to attend meetings, follow directions, and abide by procedures.

26. Wood Group presented the Putative Class Members (including Plaintiff) with non-negotiable rates of pay.

27. With minor exceptions, the Putative Class Members (including Plaintiff) did not own the equipment that they used and needed to perform their work.

28. Wood Group invested hundreds of thousands dollars in placing the Putative Class Members (including Plaintiff) at the projects it assigned them to.

29. The Putative Class Members (including Plaintiff) provided primarily their labor.

30. Plaintiff typically worked 12 hours per day, often for weeks on end.

31. Wood Group knows Plaintiff, and the other Putative Class Members, work more than 40 hours in a work week.

32. Wood Group schedules these workers to work for 12 + hours a day, for as many as 7 days a week.

33. Kibodeaux's job duties including overseeing pipeline installation, inspecting quality during construction, and updating Wood Group and/or its client on progress at the jobsite.

34. Kibodeaux was staffed to Murphy Oil.

35. Kibodeaux worked exclusively for Murphy Oil during his employment with Wood Group.

36. Kibodeaux often worked overtime without any premium compensation.

37. Kibodeaux typically worked 12 hours a day, 7 days a week.

38. Kibodeaux regularly worked in excess of 84 hours a week.

39. Wood Group classified Kibodeaux as an independent contractor and denied him overtime pay as a result of a widely applicable, illegal pay practice. Kibodeaux regularly worked in excess of 40 hours a week, but never received overtime compensation.

V. Collective Action Allegations

40. Plaintiff incorporates all previous paragraphs and alleges that the illegal pay practices Wood Group imposed on Plaintiff were similarly imposed on the Putative Class Members.

41. Numerous employees have been victimized by this pattern, practice, and policy which are in willful violation of the FLSA.

42. Numerous other employees who worked with Plaintiff have indicated that they were paid in the same manner, performed similar work, and were not properly compensated for all hours worked as required by federal wage laws.

43. Based on his experiences and tenure with Wood Group, Plaintiff is aware that the illegal practices or policies of Defendant have been imposed on the Putative Class Members.

44. The Putative Class Members all were classified as independent contractors, received a day-rate, regularly worked in excess of forty (40) hours per week, and were not paid overtime compensation.

45. Defendant's failure to pay wages and overtime compensation at the rates required by federal law result from generally applicable, systematic policies and practices which are not dependent on the personal circumstances of the Putative Class Members.

46. Plaintiff's experiences are therefore typical of the experiences of the Putative Class Members.

47. The specific job titles or precise job locations of the various Putative Class Members do not prevent class or collective treatment.

48. Plaintiff has no interests contrary to, or in conflict with, the members of the Putative Class, as defined herein. Like each member of the proposed class, Plaintiff has an interest in obtaining the unpaid overtime wages owed under federal law.

49. A collective action, such as the instant one, is superior to other available means for fair and efficient adjudication of the lawsuit.

50. Absent this action, many Putative Class Members likely will not obtain redress of their injuries and Wood Group will reap the unjust benefits of violating the FLSA.

51. Furthermore, even if some of the Putative Class Members could afford individual litigation against Wood Group, it would be unduly burdensome to the judicial system.

52. Concentrating the litigation in one forum will promote judicial economy and parity among the claims of individual members of the classes and provide for judicial consistency.

53. Plaintiff's claims are typical of the Putative Class Member's claims. Plaintiff and the Putative Class Members have sustained damages arising out of Wood Group's illegal and uniform employment policy.

54. Although the issue of damages may be somewhat individual in character, there is no detraction from the common nucleus of liability facts. Therefore, this issue does not preclude collective action treatment.

VI. FLSA Coverage

55. At all times hereinafter mentioned, Defendant has been an employer within the meaning of the Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

56. At all times hereinafter mentioned, Defendant has been part of an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

57. At all times hereinafter mentioned, Defendant has been part of an enterprise engaged in commerce or in the production of goods for commerce within the meaning of Section 3(s)(1) of the FLSA, 29 U.S.C. § 203(s)(1), in that said enterprise has and has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that said enterprise has had and has an annual gross volume of sales made or business done of not less than $500,000 (exclusive of excise taxes at the retail level which are separately stated).

58. At all times hereinafter mentioned, Plaintiff and the Putative Class Members were engaged in commerce or in the production of goods for commerce.

VII. FLSA Violations

59. Wood Group employed Plaintiff and each member of the Putative Class.

60. All Putative Class Members are afforded protections of the FLSA.

61. During the limitations period, Wood Group had a policy to classify all Putative Class Members as independent contractors and pay them a day rate.

62. Wood Group knew or should have known that the FLSA requires employees like Plaintiff to be paid hourly.

63. Despite knowing that employees like Plaintiff should be paid hourly, Wood Group paid Plaintiff and all persons like him a day rate.

64. Wood Group's failure to pay Plaintiff and all Putative Class Members overtime compensation when work was performed over 40 hours in a week is a violation of the FLSA. 29 U.S.C. § 207.

65. The foregoing conduct constitutes a willful violation of the FLSA. Due to Wood Group's FLSA violations, Plaintiff and the Putative Class are entitled to recover from Wood Group their unpaid overtime compensation, an amount equal to their unpaid overtime compensation as liquidated damages, reasonable attorneys' fees, costs, and expenses of this action.

VIII. Relief Sought

66. Plaintiff prays for judgement against Defendant as follows:

a. For an Order pursuant to Section 16(b) of the FLSA finding Defendant liable for unpaid back wages due to Plaintiff (and those who have joined in the suit) and for liquidated damages equal in amount to the unpaid compensation found due to Plaintiff;

b. For an Order awarding Plaintiff (and those who have joined in the suit) the costs of this action;

c. For an Order awarding Plaintiff (and those who have joined in the suit) their attorneys' fees;

d. For an Order awarding Plaintiff (and those who have joined in the suit) unpaid benefits and compensation in connection with the FLSA violations;

e. For an Order awarding Plaintiff (and those who have joined in the suit) pre-judgment and post-judgment interest at the highest rates allowed by law;

f. For an Order granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,

By: */s/ Michael A. Josephson*

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